

Hon. James L. Robart

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE

JOHN R. BUND II, personally, as Executor of
the Estate of Richard C. Bund, deceased;
MANDY HANOUSEK and GARETT
HANOUSEK, a married couple, and on behalf
of others similarly situated,

Plaintiff,

vs.

SAFEGUARD PROPERTIES, LLC, a
Delaware corporation,

Defendant.

No. 2:16-cv-920 JLR

STIPULATED PROTECTIVE ORDER

~~PROPOSED~~

1. PURPOSES AND LIMITATIONS

Discovery in this action is likely to involve production of confidential, proprietary, or private information for which special protection may be warranted. Accordingly, the parties hereby stipulate to and petition the court to enter the following Stipulated Protective Order. The parties acknowledge that this agreement is consistent with LCR 26(c). It does not confer blanket protection on all disclosures or responses to discovery, the protection it affords from public disclosure and use extends only to the limited information or items that are entitled to confidential treatment under the applicable legal principles, and it does not presumptively entitle parties to file confidential information under seal.

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2:16-cv-920 JLR
Stipulated Protective Order - clean copy

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2. "CONFIDENTIAL" MATERIAL

"Confidential" material shall include the following documents and tangible things produced or otherwise exchanged: (a) Defendant's (i) policies and procedures, (ii) client list, (iii) master services agreements with clients, (iv) agreements with vendors, (v) personnel files; (vi) proprietary software; (vii) company financials; (b) information regarding borrowers' loan histories, (c) dates of birth and social security and driver's license numbers of the named Plaintiffs and putative class members.

Further, Defendant's list of its clients which have engaged Defendant during the class period identified by Plaintiffs for services related to properties in the State of Washington will be marked "Confidential – Attorney's Eyes Only" and will be disclosed only between and among counsel for the parties. Counsel for plaintiffs shall not create any electronic copies. In court filings and discussions with class members, counsel for Plaintiffs will be permitted to refer to the fact of the list, how many names are on it that the properties are located in the State of Washington, and similar information that does not disclose the complete contents of the list.

3. SCOPE

The protections conferred by this agreement cover not only confidential material (as defined above), but also (1) any information copied or extracted from confidential material; (2) all copies, excerpts, summaries, or compilations of confidential material; and (3) any testimony, conversations, or presentations by parties or their counsel that might reveal confidential material. However, the protections conferred by this agreement do not cover information that is in the public domain or becomes part of the public domain through trial or otherwise.

4. ACCESS TO AND USE OF CONFIDENTIAL MATERIAL

4.1 Basic Principles. A receiving party may use confidential material that is disclosed or produced by another party or by a non-party in connection with this case only for prosecuting,

1 defending, or attempting to settle this litigation. Confidential material may be disclosed only to
2 the categories of persons and under the conditions described in this agreement. Confidential
3 material must be stored and maintained by a receiving party at a location and in a secure
4 manner that ensures that access is limited to the persons authorized under this agreement.

5 4.2 Counsel shall not disclose to any person a document marked "CONFIDENTIAL –
6 ATTORNEYS' EYES ONLY." Counsel may disclose information about such document only
7 as described in ¶ 2.

8 4.3 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
9 by the court or permitted in writing by the designating party, a receiving party may disclose any
10 confidential material only to:

11 (a) the receiving party's counsel of record in this action, as well as employees of
12 counsel to whom it is reasonably necessary to disclose the information for this litigation;

13 (b) the officers, directors, and employees (including in house counsel) of the receiving
14 party to whom disclosure is reasonably necessary for this litigation, unless the parties agree that
15 a particular document or material produced is for Attorney's Eyes Only and is so designated;

16 (c) experts and consultants to whom disclosure is reasonably necessary for this litigation
17 and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

18 (d) the court, court personnel, and court reporters and their staff;

19 (e) copy or imaging services retained by counsel to assist in the duplication of
20 confidential material, provided that counsel for the party retaining the copy or imaging service
21 instructs the service not to disclose any confidential material to third parties and to immediately
22 return all originals and copies of any confidential material;

23 (f) during their depositions, witnesses in the action to whom disclosure is reasonably
24 necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit
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1 A), unless otherwise agreed by the designating party or ordered by the court. Pages of
2 transcribed deposition testimony or exhibits to depositions that reveal confidential material
3 must be separately bound by the court reporter and may not be disclosed to anyone except as
4 permitted under this agreement;

5 (g) the author or recipient of a document containing the information or a custodian or
6 other person who otherwise possessed or knew the information; and

7 (h) insurance carriers and their claims representatives, for the purpose of analyzing and
8 valuing the potential claims.

9 4.4 Filing Confidential Material. No fewer than three court days before filing
10 confidential material or discussing or referencing such material in court filings, the filing party
11 shall confer with the designating party to determine whether the designating party will remove
12 the confidential designation, whether the document can be redacted, or whether a motion to seal
13 or stipulation and proposed order is warranted. Local Civil Rule 5(g) sets forth the procedures
14 that must be followed and the standards that will be applied when a party seeks permission
15 from the court to file material under seal.

16 5. DESIGNATING PROTECTED MATERIAL

17 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each party or
18 non-party that designates information or items for protection under this agreement must take
19 care to limit any such designation to specific material that qualifies under the appropriate
20 standards. The designating party must designate for protection only those parts of material,
21 documents, items, or oral or written communications that qualify, so that other portions of the
22 material, documents, items, or communications for which protection is not warranted are not
23 swept unjustifiably within the ambit of this agreement.
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1 Mass, indiscriminate, or routinized designations are prohibited. Designations that are
2 shown to be clearly unjustified or that have been made for an improper purpose (e.g., to
3 unnecessarily encumber or delay the case development process or to impose unnecessary
4 expenses and burdens on other parties) expose the designating party to sanctions.

5 If it comes to a designating party's attention that information or items that it designated
6 for protection do not qualify for protection, the designating party must promptly notify all other
7 parties that it is withdrawing the mistaken designation.

8 5.2 Manner and Timing of Designations. Except as otherwise provided in this
9 agreement (see, e.g., second paragraph of section 5.2(a) below), or as otherwise stipulated or
10 ordered, disclosure or discovery material that qualifies for protection under this agreement must
11 be clearly so designated before or when the material is disclosed or produced.

12 (a) Information in documentary form: (e.g., paper or electronic documents and
13 deposition exhibits, but excluding transcripts of depositions or other pretrial or trial
14 proceedings), the designating party must affix the word "CONFIDENTIAL" to each page that
15 contains confidential material. If only a portion or portions of the material on a page qualifies
16 for protection, the producing party also must clearly identify the protected portion(s) (e.g., by
17 making appropriate markings in the margins). In electronic documents where such
18 identifications is not reasonably accomplished (e.g., .pst files), the producing party may
19 designate the files as "Confidential" by including the designation in the file name, on a file
20 containing multiple confidential electronic documents, or on the external surface of any
21 tangible memory device (e.g., disk, USB drive).

22 (b) Testimony given in deposition or in other pretrial or trial proceedings: the parties
23 must identify on the record, during the deposition, hearing, or other proceeding, all protected
24 testimony, without prejudice to their right to so designate other testimony after reviewing the
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1 transcript. Any party or non-party, including officer, manager, or employee of the Defendants
2 may, within fifteen days after receiving a deposition transcript, designate portions of the
3 transcript, or exhibits thereto, as confidential.

4 (c) Other tangible items: the producing party must affix in a prominent place on the
5 exterior of the container or containers in which the information or item is stored the word

6 "CONFIDENTIAL." If only a portion or portions of the information or item warrant
7 protection, the producing party, to the extent practicable, shall identify the protected portion(s).

8 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
9 designate qualified information or items does not, standing alone, waive the designating party's
10 right to secure protection under this agreement for such material. Upon timely correction of a
11 designation, the receiving party must make reasonable efforts to ensure that the material is
12 treated in accordance with the provisions of this agreement.

13 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

14 6.1 Timing of Challenges. Any party or non-party may challenge a designation of
15 confidentiality at any time. Unless a prompt challenge to a designating party's confidentiality
16 designation is necessary to avoid foreseeable, substantial unfairness, unnecessary economic
17 burdens, or a significant disruption or delay of the litigation, a party does not waive its right to
18 challenge a confidentiality designation by electing not to mount a challenge promptly after the
19 original designation is disclosed.

20 6.2 Meet and Confer. The parties must make every attempt to resolve any dispute
21 regarding confidential designations without court involvement. Any motion regarding
22 confidential designations or for a protective order must include a certification, in the motion or
23 in a declaration or affidavit, that the movant has engaged in a good faith meet and confer
24 conference with other affected parties in an effort to resolve the dispute without court action.
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1 The certification must list the date, manner, and participants to the conference. A good faith
2 effort to confer requires a face-to-face meeting or a telephone conference.

3 6.3 Judicial Intervention. If the parties cannot resolve a challenge without court
4 intervention, the designating party may file and serve a motion to retain confidentiality under
5 Local Civil Rule 7 (and in compliance with Local Civil Rule 5(g), if applicable). The burden of
6 persuasion in any such motion shall be on the designating party. Frivolous challenges, and
7 those made for an improper purpose (e.g., to harass or impose unnecessary expenses and
8 burdens on other parties) may expose the challenging party to sanctions. All parties shall
9 continue to maintain the material in question as confidential until the court rules on the
10 challenge.

11 7. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN
12 OTHER LITIGATION

13 If a party is served with a subpoena or a court order issued in other litigation that
14 compels disclosure of any information or items designated in this action as
15 "CONFIDENTIAL," that party must:

16 (a) promptly notify the designating party in writing and include a copy of the subpoena
17 or court order;

18 (b) promptly notify in writing the party who caused the subpoena or order to issue in the
19 other litigation that some or all of the material covered by the subpoena or order is subject to
20 this agreement. Such notification shall include a copy of this agreement; and

21 (c) cooperate with respect to all reasonable procedures sought to be pursued by the
22 designating party whose confidential material may be affected.

23 8. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL
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1 If a receiving party learns that, by inadvertence or otherwise, it has disclosed
2 confidential material to any person or in any circumstance not authorized under this agreement,
3 the receiving party must immediately (a) notify in writing the designating party of the
4 unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the
5 protected material, (c) inform the person or persons to whom unauthorized disclosures were
6 made of all the terms of this agreement, and (d) request that such person or persons execute the
7 "Acknowledgment and Agreement to Be Bound" that is attached hereto as Exhibit A.

8 9. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
9 PROTECTED MATERIAL

10 When a producing party gives notice to receiving parties that certain inadvertently
11 produced material is subject to a claim of privilege or other protection, the obligations of the
12 receiving parties are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This
13 provision is not intended to modify whatever procedure may be established in an e-discovery
14 order or agreement that provides for production without prior privilege review. Parties shall
15 confer on an appropriate non-waiver order under Fed. R. Evid. 502.

16 10. NON TERMINATION AND RETURN OF DOCUMENTS

17 Within 60 days after the termination of this action, including all appeals, each receiving
18 party must return all confidential material to the producing party, including all copies, extracts
19 and summaries thereof. Alternatively, the parties may agree upon appropriate methods of
20 destruction.

21 Notwithstanding this provision, counsel are entitled to retain one archival copy of all
22 documents filed with the court, trial, deposition, and hearing transcripts, correspondence,
23 deposition and trial exhibits, expert reports, attorney work product, and consultant and expert
24 work product, even if such materials contain confidential material.
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1 The confidentiality obligations imposed by this agreement shall remain in effect until a
2 designating party agrees otherwise in writing or a court orders otherwise.

3 IT IS SO STIPULATED, THROUGH COUNSEL OF RECORD.

4 DATED this 17th day of March, 2017.

5
6 JEFFERS, DANIELSON, SONN & AYLWARD,
P.S.

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PURSUANT TO STIPULATION, IT IS SO ORDERED.

DATED: March 22, 2017



Hon. James L. Robart
U.S. District Court Judge

EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of
_____ [print or type full address], declare under penalty of
perjury that I have read in its entirety and understand the Stipulated Protective Order that was
issued by the United States District Court for the Western District of Washington on [date] in
the case of Bund, et al. v. Safeguard Properties, LLC Case No. 2:16-cv-920 JLR I agree to
comply with and to be bound by all the terms of this Stipulated Protective Order and I
understand and acknowledge that failure to so comply could expose me to sanctions and
punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner
any information or item that is subject to this Stipulated Protective Order to any person or
entity except in strict compliance with the provisions of this Order.

I further agree to submit to the jurisdiction of the United States District Court for the
Western District of Washington for the purpose of enforcing the terms of this Stipulated
Protective Order, even if such enforcement proceedings occur after termination of this action.

Date: _____

City and State where signed: _____

Printed name: _____

Signature: _____